Supreme Court, U.S.
FILED

991670 APR 10 2000

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Gale L. Webb, and Judy M. Webb

Petitioners

v.

ANTHONY MENDENHALL and
THE UNITED STATES OF AMERICA

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Gale L. Webb and Judy M. Webb, Petitioners/Pro se
927 E. Libra Dr.
Tempe, Arizona 85283
Telephone: (602) 716-5528 Of

Of Counsel

Loretta C. Argrett
Dept. of Justice Tax Division
P.O. Box 502
Washington, D.C. 20044
(202) 514-2803

12 pp

QUESTION PRESENTED FOR REVIEW

WHEN TAXPAYERS DO NOT HAVE BOOKS OF ACCOUNT AND RECORDS MAINTAINED FOR THE INCOME TAX, ARE THEIR PERSONAL, PRIVATE RECORDS AND PAPERS, MAINTAINED IN THEIR HOMES, PROTECTED FROM IRS SUMMONS UNDER THE SEARCH AND SEIZURE PROVISION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

IN THE

SUPREME COURT OF THE UNITED STATES

Gale L. Webb, and Judy M. Webb

Petitioners

v.

ANTHONY MENDENHALL and
UNITED STATES OF AMERICA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Gale L. Webb and Judy M. Webb petition for a writ of certiorari to review the Judgment of the United States Court of Appeals for the Ninth Circuit ("the Court of Appeals") affirming the Judgment the denying 4th Amendment protection to Petitioners' private papers and documents by the United States District Court for Arizona.

OPINION BELOW

The opinion of the Court of Appeals was filed as unpublished on January 10, 2000.

JURISDICTION

The judgment of the Court of Appeals was entered on January 10, 2000. The jurisdiction of this Court is invoked under 28 USC § 1254(1) and rule 13 of the Rules of this Court. Jurisdiction of the District Court was based upon 28 USC § 1331.

THE CONSTITUTIONAL PROVISION INVOLVED IS THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTORY PROVISION INVOLVED

26 USC §7602 provides, in pertinent part, as follows:

"a) Authority to summon, etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized - (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and "

STATEMENT

This case raises, and squarely addresses, a Fourth Amendment issue previously alluded to, and commented upon by this Court, but never ruled upon. The lower courts and appellate courts have consistently ruled against Forth Amendment protections for the non-criminal. The following is a very minimal statement of the factual background of this case.

1. Gale and Judy Webb were served with first party Summonses, and copies of third party Summonses, by the Internal Revenue Service. The Webbs filed an action to quash the Summonses.

2. During the course of the action the Webbs claimed a Fourth Amendment protection for their personal papers and records in their possession. The District Court ruled that the Webbs' papers and documents in their possession were not protected under the Fourth Amendment.

3. The Webbs appealed the ruling of the District Court to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the District Court's ruling in an unpublished opinion.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition to review this case for the straightforward reason that this Court has stated in dictum, also in a concurring opinion, that the taxpayer has a right to claim the protection of the Fourth Amendment for papers and documents in their possession. The lower, and appellate courts do not recognize that right. Their rulings are in express conflict with this courts opinions, expressed in Fourth Amendment cases not directly on point for this issue. This case deals squarely with the claim of Fourth Amendment protection by the taxpayers themselves for their own papers and documents, in their possession.

In Donaldson v. United States, 400 U.S. 517, 27 L Ed 2d 580, 91 S Ct 534 (1971), this Court dealt with the issue of Fourth and Fifth Amendment protection in regard to a third party summons. In summarizing the factual and procedural background of the case for the majority opinion Mr. Justice Blackmun stated:

> We emphasize initially, as did Judge Tuttle in his opinion for the Court of Appeals, 418 F.2d, at 1214, that what is sought here by the Internal Revenue Service from Mercurio and from Acme is the production of Acme's records and not the records of the *taxpayer*. (Emphasis in original).

In his concurring opinion Mr. Justice Douglas stated:

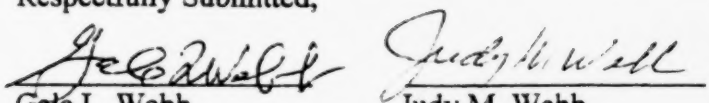
> It is true that a person who is summoned may object that the production of records or testifying would violate *his* rights under the Fourth or Fifth Amendments. . (Emphasis in original)

There is great confusion as to the issue of protection of papers and documents in the hands of the taxpayers themselves, when the issue is civil, and not criminal.

CONCLUSION

The taxpayers believe they have a Fourth Amendment protection for their documents and papers in their possession. They have derived this belief from reading the Constitution of the United States and decisions of this Court. This area of law has not been directly ruled upon by this Court, and the subsequent confusion should be laid to rest. This can only be done by this Court.

Respectfully Submitted,



Gale L. Webb
Petitioners/ Pro se
927 E. Libra Dr.
Tempe, Arizona 85283
Telephone: (602) 716-5528 Of

Judy M. Webb

Of Counsel:

Loretta C. Argrett, Assistant Attorney General
Tax Division
Dept. of Justice
P.O. Box 502
Washington, D.C. 20044
Telephone: (202) 514-2830

APPENDIX

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Gale L. Webb and Judy M. Webb, Petitioners, v. ANTHONY MENDENHALL, et al., Respondents.	M98-0073-PHX-EHC ORDER

On January 28, 1999, the Court entered an order granting Respondents' motion to enforce summonses issued by the IRS and denying Petitioners' motion to quash said summonses. Petitioners now seek relief from that order "due to the unintentional misrepresentation of case law to the Court by counsel for the United States."

Motions to reconsider are rarely appropriate. "[W]here litigants have once battled for the court's decision, they should neither be required , nor without good reason permitted, to battle for it again." Virgin Atlantic Airways, Ltd. V. National Mediation Bd., 956 F. 2d 1245, 1255 (2d Cir. 1992) (internal quotations omitted). The grounds for such a motion are narrowly defined:

> The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va 1983). See also Sullivan v. Faras-RLS Group, Ltd., 795 F. Supp. 305, 308-309 (D. Ariz. 1992).

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F. 2d 906, 909 (3d Cir. 1985). It should not be used to ask the court to rethink its decision:

> ... a motion for reconsideration is not the proper vehicle for revisiting issues that were decided ... or for a "recapitulation of the cases and arguments considered by the court before rendering its original decision." The party moving for reconsideration must show more than a disagreement with the court's decision; the court should not grant the motion unless there is a need to correct a clear error of law or prevent manifest injustice.

In re Worlds of Wonder Securities Litigation, 814 F. Supp. 850, 874 (N.D. Cal. 1993), rev'd in part on other gr., 35 F.3d 1407 (9th Cir. 1994).

Petitioners' present motion is premised on the assumption that the Court misapplied relevant case law in its earlier ruling. In short, their present motions asking the Court to rethink its previous decision. The Court finds no basis for granting the relief sought by Petitioners.

Accordingly,

IT IS ORDERED denying Petitioners' motion for relief from the Court's order of January 28, 1999. (Dkt. 23).

DATED this 26 day of February, 1999.

S/ Earl H. Carroll
Earl H. Carroll
United States District Judge

FILED , Jan 10 2000
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Gale L. Webb and Judy M. Webb, Plaintiffs-Appellants, v. ANTHONY MENDENHALL, IRS Agent; UNITED STATES OF AMERICA, Defendants-Appellees.	No. 99-15693 D.C. No. M-98-73-EHC MEM0RANDUM[1]

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Submitted December 13, 1999[2]

Before: LEAVY, TROTT, and SILVERMAN, Circuit Judges.

---

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

2 The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Gale L. Webb and Judy M. Webb appeal pro se the district court's judgement denying their motion to quash Internal Revenue Service ("IRS") summonses and granting the government's enforcement action. We have jurisdiction under 28 U.S.C. § 1291. We review under a clearly erroneous standard, *see Tornay v. United States*, 840 F. 2d 1424, 1426 (9th Cir. 1988), and we affirm.

We affirm for the reasons stated in the district court's decision filed on January 29, 1999.

We deny the Webb's Motion For Permission To Amend Request For Relief.

AFFIRMED.

A TRUE COPY 3/6/00
ATTEST
Clerk of Court
Signed
DEPUTY CLERK

This certification
constitutes the man-
Date of the Court